EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SONOS, INC. * August 10, 2021
*
VS. * CIVIL ACTION NO. W-20-CV-881
*
GOOGLE LLC *

BEFORE THE HONORABLE ALAN D ALBRIGHT
DISCOVERY HEARING (via Zoom)

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

(August 10, 2021, 9:38 a.m.)

DEPUTY CLERK: Court calls Waco 6:20-CV-881, styled Sonos, Inc. versus Google LLC for a Markman hearing.

THE COURT: If I could have announcements from counsel, please.

MR. SIEGMUND: Good morning, Your Honor. This is Mark Siegmund for plaintiff Sonos, Inc. With me today is Cole Richter, Rory Shea, Dan Smith, Sean Sullivan, Michael Boyea and Jae Pak with the law firm of Lee Sullivan Shea & Smith LLP.

Mr. Richter, Shea, Smith and Boyea will be the main speakers today, Your Honor.

THE COURT: Okay.

MR. BURBANK: Good morning, Your Honor. Stephen Burbank with Scott Douglass & McConnico for Google. With me are co-counsel Charles Verhoeven, Jordan Jaffe and Marc Kaplan, all from Quinn Emanuel.

Also with us is our in-house counsel, Patrick Weston. Mr. Verhoeven, Mr. Jaffe and Mr. Kaplan will be handling the arguments for Google.

THE COURT: Well, it sounds like we have an all-star cast, and I appreciate in-house counsel and clients for attending. I also always enjoy having law clerks on competing sides. Always good to see former law clerks attend these hearings.

So let me pull up -- give me one second. The first claim term that we have is "multimedia."

Who will be taking this one up?

MR. RICHTER: I believe that will be me, Your Honor. Cole Richter on behalf of Sonos.

THE COURT: Yes, sir.

MR. RICHTER: And actually, you know, Your Honor, before we jump into some of the constructions, I was hoping to cover a couple of preliminary issues that apply to all the claim terms, if you'll permit me.

First, in reviewing some of the Markman transcripts from your other cases, Your Honor, we understand and we want to confirm on the record that our decision to argue certain things but not other things will not be held against us and that Sonos is preserving all the arguments made in the briefs and are not waiving any arguments on appeal regarding claim construction.

Did I get that right, Your Honor?

THE COURT: Well, let me just say this. I don't know what you mean by "be held against you." As far as I'm concerned, it's perfectly okay with me to -- for the parties to select which ones -- you've taken your position in all the papers, and I think those, on appeal, that -- but I'm not the Federal Circuit, and they wouldn't have ever let me appear in front of the Federal Circuit, but my sense is you all have those arguments.

What we do at the Markman hearing is, you all simply decide which ones you think are worthy of having additional

advocacy and have me decide.

But, for example, if there was a preliminary construction I gave with which your client disagreed with, as far as I'm concerned, the fact that you didn't argue it today doesn't mean -- doesn't mean it's not preserved. It just means you felt like it would be better -- the way I see it is, you thought your client would be better served by arguing other claim terms.

That's the way I see it. And I think that's -- you're absolutely right. I think that whatever you've argued in your papers, you've taken that position for purposes of appeal.

MR. RICHTER: Thank you, Your Honor.

Second, in the hopes of reducing some of the disputes before the Court today, I want to raise just a quick point of clarification on Your Honor's preliminary constructions.

So for the terms where, for example, Sonos proposed the construction and the Court, in its preliminary construction, said plain and ordinary meaning and those terms, for example, are "multimedia," "network interface," "playback device/zone player," "local area network," "data network," we understand --

THE COURT: All words that have plain and ordinary meaning that anyone would -- that anyone, even my 19 and 20-year-old would know. And I was going to get into that, but you go first, then I'm going to have some comments.

MR. RICHTER: Okay. No problem. No problem.

Yeah. I just wanted to seek this clarification.

So we understand that the Court's preliminary construction of plain and ordinary meaning is an indication that the Court believes that no construction is necessary at this time and that Sonos would not be precluded from asserting at a later time, for example, in a summary judgment motion or pretrial proceeding, that the plain and ordinary meaning of these terms as understood in the context of the patents-in-suit is the construction that Sonos is now proposing.

And if that understanding is correct, then Sonos will not present any argument at the hearing today against the Court's preliminary construction of plain and ordinary meaning for those terms and instead would reserve arguments.

THE COURT: You're absolutely right. But let me -- you're right, and I'm not -- but here's the way I see the world. My -- in none of these situations was I saying that the proposed construction was incorrect and rejecting it.

And typically -- not typically, always when I -- if I'm making that determination where someone has said, it's got to be X, and I think that that's not right, I put that on the record. That's not the situation here.

But here, let me frame it a little differently, and I was going to tell you all this anyway. The way I see the world, for better or worse for you all, is, when someone's drafting a patent and they use the word "zone," now, if the patent has to

do with zones and they are patenting something that has to do with zones and saying, my zone is different than an ordinary zone and here's why, and they claim something or they say something in the spec or they say something during the prosecution history to get the word "zone" allowed and they give up something, that's a different deal.

But in situations like this, where, you know, all the words, all the terms that you said, "multimedia," "network interface," "zone," "group configuration," especially "local area network," "data network," where when the person is writing the patent and he's just acting as one skilled in the art to interface with the Patent Office and he uses those claim terms, then it's plain and ordinary meaning and I don't swerve from that.

However, if for -- here's -- it's not a perfect analogy, but here's what I try and get across to people. Let's say that you have invented a way of -- a method of installing Astroturf in a baseball field and the magic of the patent is that a baseball outfield is curved, and you come up with a method that -- part of which is on a field that is curved. And that's all you -- you used the word "curved," which everyone knows what the word "curved" means.

If someone comes in and wants to apply it to, let's say, a soccer field or a football field, the word "curved," that's not the plain and ordinary meaning. Those are 90-degree angles.

But if someone wants to come in and say, well, it's -- there's only a 2 percent degree curve, that's not enough curve. That's not curved. To me, curved then has a plain and ordinary meaning.

And again, assuming nothing was given up and nothing was claimed and nothing in the specification, curved means curved. And when we get to the jury in this case and your person is saying that defendant's products have plain and ordinary meaning for "local area network," the only way either side is in trouble is if the expert takes such a greedy interpretation of local area network that I can decide as a matter of law that it either is or isn't a local area network.

And you can bring that to me after the final infringement contentions, you can bring it to me after the expert reports, or someone -- or you can come in and say, the other side's -- the other side or their expert is not applying the ordinary meaning of this word.

Again, I use the word "curved" because I think a jury can understand, and as a factual matter, what is or is not curved.

But if you all have a fight, that's a true fight, over what the plain and ordinary meaning is of claim terms like "zone," then I want you to -- I want the parties to be in concrete on the positions they're -- legal positions they're taking with regard to infringement and invalidity, bring them to me -- motions -- I'm talking to you, but I'm talking to both

sides -- bring them to me as a preliminary summary judgment matter, and I will determine whether or not that's appropriate.

MR. RICHTER: Okay. Thank you very much for that, Your Honor.

And with that, Sonos can forego argument on many of the terms. Actually, the terms that were given the plain and ordinary indication in the Court's e-mail. And Sonos would then instead argue the two terms that had a preliminary construction of indefinite, and that would be "cause a selectable indication" -- sorry. Go ahead, Your Honor.

THE COURT: Let me just interrupt you for a second. I'll ask Mr. Burbank or Mr. Verhoeven, or whoever it is: Having heard what counsel just said, does the defendant wish, on any of the claim terms -- we're going to get to the ones about whether or not it's indefinite, but with regard to the claim terms that Sonos is not going to take up with respect to plain and ordinary meaning, does the defendant have any desire to be heard on any of those claim terms? If not, we'll move forward to the ones that -- where the argument is that they're indefinite.

MR. VERHOEVEN: Well, Your Honor, this is Mr. Verhoeven. Let's just take an example of the phrase "network interface." Your Honor construed that to have its plain and ordinary meaning.

We have a dispute right now because the plaintiff in this

case, Sonos, wants to limit network interface to only digital networks and not all networks. And we've said that we disagree with that construction and the plain and ordinary meaning should apply, which is all networks, digital or analog.

Your Honor said plain and ordinary meaning in the construction. So here's an example of one where we know we disagree with what they're proposing.

THE COURT: Well, you actually have -- you've actually made my point. Right now I have -- right now I've said it's plain and ordinary meaning. If when you get their final infringement contentions or when you get -- when you get -- when they are in concrete -- when either they have taken a position on infringement contentions or in their expert report where they attempt to limit it in the manner that you say, you are free to file a motion for summary judgment and say to me, Judge, that's not -- they are not applying the plain and ordinary meaning as a matter of law, and I will take that up and I will decide it.

MR. VERHOEVEN: Okay. Well, with that, that's great, Your Honor. And it's good to know. I appreciate your telling us that in the beginning.

THE COURT: Because right now your concern is -- I've had a couple Markmans now. And by the way --

(Laughter.)

THE COURT: By the way, it's wonderful. I haven't seen

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 11th day of August 2021.

/s/ Kristie M. Davis

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